
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, v. MARLON ALONZO SMITH, Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL**

Case No. 4:16-cr-00020-DN

District Judge David Nuffer

Defendant Marlon Alonzo Smith filed two motions seeking appointment of counsel¹ to appeal the Order² dismissing without prejudice his Motion for Relief from Judgment.³

There is no right to counsel for Mr. Smith's appeal of the Order.⁴ The appointment of counsel to represent Mr. Smith on appeal also would not be in the interest of justice. Mr. Smith's Motion for Relief from Judgment is considered a second-or-successive motion under 28 U.S.C. § 2255, and Mr. Smith did not obtain authorization from the Tenth Circuit Court of Appeals for the filing.⁵ Consequently, subject matter jurisdiction over the Motion for Relief from Judgment

¹ Motion for Appointment of Counsel, [docket no. 304](#), filed Jan. 27, 2025; Motion for Appointment of Counsel, [docket no. 315](#), filed Jan. 30, 2025 (collectively, "Motions for Appointment of Counsel").

² Memorandum Decision and Order Dismissing Without Prejudice Motion for Relief from Judgment ("Order"), [docket no. 299](#), filed Jan. 8, 2025.

³ Amended Motion for Relief from Judgment Pursuant to Federal Rules of Civil Procedure Rule 60(b)(4) and Rule 60(b)(6) ("Motion for Relief from Judgment"), [docket no. 297](#), filed Dec. 2, 2024.

⁴ *United States v. Akers*, 807 Fed. App'x 861, 867 (10th Cir. 2020).

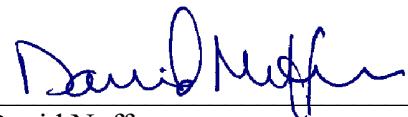
⁵ Order at 2-4.

was lacking and a certificate of appealability was denied.⁶ Mr. Smith has also now voluntarily dismissed his appeal of the Order.⁷

Therefore, IT IS HEREBY ORDERED that Mr. Smith's Motions for Appointment of Counsel⁸ are DENIED.

Signed March 4, 2025.

BY THE COURT



David Nuffer
United States District Judge

⁶ *Id.*

⁷ Order in *United States v. Smith*, 10th Cir. No. 25-4010, [docket no. 317](#), filed Feb. 6, 2025; Motion to Withdraw Notice of Appeal, [docket no. 319](#), filed Feb. 21, 2025.

⁸ [Docket no. 304](#), filed Jan. 27, 2025; [docket no. 315](#), filed Jan. 30, 2025.